

## **Giving Grants from Parents to Their Children According to the Compilation of Islamic Law and the Civil Code**

**Borkat Halomoan Siregar, Ahmad Rezy Meidina**

Faculty of Sharia and Law UIN Sunan Kalijaga Yogyakarta

Laksda Adisucipto Street Yogyakarta Special Region of Yogyakarta

[bhalomoansiregar@gmail.com](mailto:bhalomoansiregar@gmail.com), [ahmadrezymeidina@gmail.com](mailto:ahmadrezymeidina@gmail.com)

### **ABSTRACT**

This article examines the gifts that parents give to their children. Grants in the perspective of classical fiqh are giving an object voluntarily and without reward from someone to another who is still alive to own it. The concept of grants is currently changing, in practice, many grants that are given are then canceled by the grantor for various reasons, for example, the recipient of the grant has bad behavior or has a spendthrift spirit. This was known after the grant was given. Even though the person previously displayed good behavior but then changed with the changing times. Fundamentally, the author is interested in this research, using a *statute approach* by examining the Civil Code and the Compilation of Islamic Law as well as Government Regulation Number 37 of 1998 concerning regulations for the position of Land Deed Making Officer. The research method used is Normative juridical with the aim that writers and readers can find out about the arrangements for granting and the legal consequences of canceling a grant according to the Compilation of Islamic Law and the Civil Code and provide several benefits, namely for scientific development in the field of law in general, as well as contributing thoughts and understanding of grantmaking.

**Keywords: Grants, KHI, Civil Code.**

### **INTRODUCTION**

Law as a rule or social norm cannot be separated from the values prevailing in society. <sup>1</sup>Family as part of society can provide good teaching in life socialize. One of the problems that often arise is regarding the transfer of assets from parents to their children usually in the form of a grant. In practice, many grants are granted and then canceled by the grantor for various reasons, For example, grantees badly behaved or possessed a soul spender. It is known after the grant was awarded. Though that person previously had behavior good but then changed over time changing. Researchers in this study used a statutory approach ( *statute approach* ) to study the law Civil Law and Compilation of Laws

---

<sup>1</sup> Soerjono Soekanto, *Fundamentals of Sociology Law* (Jakarta: PT. RajaGrafindo Persada, 2007), p. 12.

Islam and Government Regulations Number 37 of 1998 concerning regulations for the position of the Land Deed Making Officer. The problem statement discussed by the author is Grants and Legal Consequences Cancellation of a Grant According to Compilation of Islamic Law (KHI) and Code of Civil law (KUHPer). Research methods used are normative juridical by providing goals writers and readers alike find out about settings awarding of grants and legal consequences cancellation of a grant according to Compilation of Islamic Law and the Book Civil Law Act as well provide several benefits viz for scientific development in the field of law in general, as well contribute thoughts and understanding of Giving grants and legal consequences of cancellation a grant.

The results of the discussion show that about grants in Islam more mutual help ( *ta'awun* ) between people, mentioned in Qs. Al-Baqarah 2:262, Qs. Al-Munafiqun 63:10 and Qs. Al-Maidah paragraph 2. But there is a different opinion on the size of the gift grants both in terms of the Hanafi school of thought nor the clergy, therefore the Muslims made a decision *ijma'* that has been determined based on the Compilation of Islamic Law with 1/3 (one-third) of the assets held to be donated.<sup>2</sup> About the terms of the grant with the existence of a grantor, some people receive grants, there is a grant object, and there is the consent granted. Meanwhile, in the Book, The Civil Law Act is regulated in articles 1666-1693.

A grant is a legal act of transferring ownership rights that are intentionally transferred to another party. There are several forms of legal acts of transferring rights apart from being carried out by way of grants, including buying and selling, exchanging, giving according to custom, income in the company (*inbred*) and grants will ( *legat* ). Transfer of rights carried out at the time of the holder his right is still alive and is cash legal action except for wills. <sup>3</sup>Cash means when a legal action is taken said, the right has been transferred to other parties.

Allowance for cancellation of grants in Article 1688 of the Civil Code. With the cancellation of the grant, then all sorts of stuff that has been granted must immediately be returned to the donor in a clean condition of the burdens attached to the goods. <sup>4</sup>Grants can do orally or in writing as stated in the Qur'an Surah Al-Baqarah verses 282 and 283 as the basic contract in Islam. With regards to legal consequences born from the grant that will be given to one of the heirs without the approval of other heirs and not authentically made it can be canceled because it doesn't exist the approval of other heirs and according to KHI article 210

---

<sup>2</sup>Khosyi'ah S, *Endowments and Grants (Perspectives of Fiqh Scholars and Their Development)* (Bandung: CV. Pustaka Setia, 2010), p. 25.

<sup>3</sup> Boedi Harsono, *Indonesian Agrarian Law (History of the Establishment of the Basic Law Agrarian Affairs, Contents, and Implementation)* (Jakarta: Djembatan, 2008), p. 76.

<sup>4</sup>Anshori, Abdul Ghofur, *Philosophy of Grant and Will Law in Indonesia* (Yogyakarta: UGM Press, 2018), p. 87.

paragraph 2 goods who feels his rights have been violated then may file a lawsuit for annulment grants in the Religious Courts.

Based on the description above author to discuss the purpose of the research as follows; aims to find out the settings regarding the awarding of grants according to the Compilation of Islamic Law (KHI) and the Book of Laws Civil Code (KUHPer) and aims to find out the implications jurisdiction over the cancellation of grants according to Compilation of Islamic Law (KHI) and the book of Laws Civil Code (KUHPer).

## METHOD

This study uses a qualitative method. Qualitative methods are traditional research methods that have been used for a long time. The method in this writing uses *library research* with a focus on studying and examining how parental grants are given to their children. The conclusion in this paper uses a *normative juridical approach*, to disclose the values of truth in the practice of giving parental grants to their children in society so that they should be actualized in the future.<sup>5</sup>

## RESULT AND DISCUSSION

### Definition of Grant

When explored in depth, the term grant connotes giving rights belonging to someone others without expecting rewards and services. grant does not the same meaning as sell or rent. <sup>6</sup>Therefore, the term remuneration and compensation do not apply in grant transactions. Based on p it, it is necessary beforehand to put forward the definition or inner grant meaning clerical view.

According to the language of grants is a charity or giving something, either in the form of property, or other than in the form of property to other people. According to Syria's terms, a grant is a contract that results in the transfer of ownership of property from one person to another with no recompense and is carried out for life. <sup>7</sup>In-depth, the term grant connotes giving property rights by one person to another without expecting rewards and services. Giving is not the

---

<sup>5</sup> Sugiyono, *Quantitative-Qualitative Research Methods and R&D* (Bandung: Alfabeta, 2008), p. 13.

<sup>6</sup>Nasution, *Islamic Civil Law: competence of religious courts regarding marriage, inheritance, wills, grants, endowments and almsgiving* (Bandung: CV. Mandar Maju, 1997), p. 12.

<sup>7</sup> Awaliyah Robiah and Nadjematul Faizah. "Juridical Review of Grant Cancellation Cases (Case Study of Decision Number 467 K/Ag2017)." *Al-Mizan: Journal of Islamic Law and Economics*, no. 1 (2020): 108-130.

same as selling or renting. Therefore, the terms remuneration and compensation do not apply in grant transactions.<sup>8</sup>

A grant in the sense of giving also means that the donor is willing to relinquish his rights to the object donated in connection with a legal act, a grant is a form of transfer of property rights. <sup>9</sup>The grant itself must be made by the owner of the property (grantor) to the recipient while he is still alive. So the grant transaction is cash and direct and is not carried out or it is implied that the transfer takes effect after the grantor dies.

Grants are included in the engagement which is regulated in the Third Book of the tenth Chapter of Burgerlijk Wetboek (BW). In connection with this grant several things need to be considered, namely:

1. A grant is a unilateral agreement made by the grantor during his life to provide something free of charge to the recipient of the grant. Grants must be made between living people.
2. The grant must be made in a notarial deed, if it is not carried out in a notarial deed, the grant is canceled.
3. Grants between husband and wife are prohibited.

life freely and irrevocably surrenders an object for the beneficiary who receives the handover. <sup>10</sup>In this article, it is clear that it is not permissible for someone to withdraw or cancel a grant without the consent of the recipient of the grant. However, Article 1688 of the Civil Code allows the withdrawal or elimination of a grant due to the following reasons:

1. Because the conditions under which the grant was made were not met.
2. If the recipient of the grant has been guilty of committing or assisting in committing a crime aimed at taking the soul of the grantor or another crime against the grantor.
3. If the beneficiary refuses to provide living allowances to the grantor after the grantor falls into poverty.

While in the Compilation of Islamic Law Article 171 Presidential Instruction No. 1 of 1991 concerning voluntary giving of an object without compensation from someone to another person who is still alive to be owned.

---

<sup>8</sup> Dian Latifiani, "Authentic Deed to Minimize Grant Disputes." *Journal of Abdimas*, no. 1 (2015): 25538.

<sup>9</sup> Putri, Darmawan, and Mansur. "Transfer of Joint Assets Through Grants Without the Permission of One of the Parties Based on Law Number 1 of 1974 and the Compilation of Islamic Law." *Shia Kuala Law Journal*, no. 1 (2019): 81-94.

<sup>10</sup> Muhammad Fikri Syuhada. "Cancellation of the Grant Deed by Heirs After the Decision of the Religious Court." *Journal of Law and Notary Affairs*, no. 1 (2019): 191-207.

Furthermore, Article 212 of the Compilation of Islamic Law states that gifts cannot be withdrawn except for gifts from parents to their children.

## Fundamentals of Grant Law

Grant is one nature agreement reciprocity because only one side is obligatory achievements and others only have rights for this achievement. In Islam is a very gift it is recommended to remember more helpful ( *ta'awun* ) between each other. God has commanded humans to love one another, and one of the ways is by giving gifts voluntarily. The legal basis for the provision of grants is the word of Allah in Surah Al Baqarah: 177:

لَيْسَ الْبِرَّ أَنْ تُوَلُّوا وُجُوهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ وَلَكِنَّ الْبِرَّ مَنْ  
أَمَنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَالْمَلَائِكَةِ وَالْكِتَابِ وَالنَّبِيِّينَ وَآتَى الْمَالَ عَلَى  
حُبِّهِ ذَوِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينَ وَابْنَ السَّبِيلِ وَالسَّائِلِينَ وَفِي  
الرِّقَابِ وَأَقَامَ الصَّلَاةَ وَآتَى الزَّكَاةَ وَالْمُوفُونَ بِعَهْدِهِمْ إِذَا عَاهَدُوا  
وَالصَّابِرِينَ فِي الْبَأْسَاءِ وَالضَّرَّاءِ وَحِينَ الْبَأْسِ أُولَٰئِكَ الَّذِينَ صَدَقُوا  
وَأُولَٰئِكَ هُمُ الْمُتَّقُونَ

Meaning: "It is not turning your face toward the east and west that is a virtue, but the virtue is believing in Allah, the Last Day, angels, books, prophets and giving the property he loves to his relatives, children orphans, poor people, travelers (who need help) and beggars; and (liberate) slaves, establish prayers, and pay zakat; and those who keep their promises when they promise, and those who are patient in adversity, suffering and in war. they are the true (faith), and they are the pious ones."

In addition, there is a hadith regarding grants which means: From Khalid bin Adi, that the Prophet Muhammad said: "Whoever is given kindness by his brother without exaggeration and he doesn't ask, let him accept (don't refuse); Verily, this is the sustenance that Allah has given him." (Narrated by Ahmad). There is also a Hadith from Abu Hurairah, Abdullah Ibn Umar, and Siti Aisyah ra that Rasulullah SAW said, "Give each other gifts all of you (then) you will love each other."

## Grant Rate

Regarding the issue of grant levels, scholars have different views. Sayyid Sabiq and jurists agree that there is no minimum limit in granting, you may donate assets to other people, including those who are not their heirs. This is in line with what was stated by Eman Suparman, in Islamic law the amount of property

someone who wants to donate is not limited. Unlike the case of giving someone through a will which is limited to only one-third of the net inheritance.<sup>11</sup>

Related property that can be donated includes all objects that are tangible or intangible. In principle, all objects or rights that can be traded can be donated. In the context of this modern era, there are intangible objects such as stocks, digital gold, and Metaverse, which have certificates proving that they own these objects.

The size of the property or object granted, in Islamic Law Compilation has been mentioned in Article 210:

"An old man at least 21 years old, reasonable and absent coercion may grant maximum 1/3 (one third) property to others or institution".

## Terms and Pillars

A grant contract would be perfect with terms and conditions sufficient. Get along and Grant conditions consist of:

1. Some people give or give grants (gibah) ( *al - wahib* ).
2. Some people receive a grant (beneficiary) ( *almahublah* ).
3. There is a grant object, something donated ( *al-hibah* )
4. There is the consent granted ( *shighat* grant).<sup>12</sup>

## Grants and Cancellation According to KHI

As already described a grant, constitutes a gift from a giver granted to others as a grantee when the giver grants (who have property) still life, while inheritance is given when the heir (who owns the property) has died world. Even times the gift is different given to children or experts' heirs because it will determine what portion of the inheritance will receive.<sup>13</sup>

If the grant counted as inheritance depends on a lot of his children, or is calculated by the system inheritance. Because as said Omar Bin Al-Khattab, peace is even better, than should be involved in the future court. if the gift is expressed as a grant only, then according to the guidance of the Prophet Muhammad. So the distribution must be even. This is confirmed by the actions of the prophet, "If your kids don't you give with gifts the same, then pull back.

Article 212 Compilation Islamic law states, that non-refundable grant, except parental grants to his son. Cancellation or recall of a gift (grant) is a forbidden act, even though the grant occurred between two brothers or husband

---

<sup>11</sup> Eman Suparman, *Internal Indonesian Inheritance Law The perspective of Islam , Custom and BW* (Bandung: Refika Aditama, 2005), p. 62.

<sup>12</sup>Ibnu Rushd, *Bidayatul Mujtahid* , (Surabaya: Pustaka Azam, 2000), p. 133.

<sup>13</sup>Islamic Law Compilation

and wife. As for grants which can be withdrawn only grants made or given to the parents of his son.<sup>14</sup>

Withdraw grants are unlawful, except for gifts given by a father to his son. This matter is based on the argument of the Hadith Sahih hadith narrated by Muslims which reads: "Ibnu Abbas said that the Prophet SAW said: the one who took re-gift for example person who swallowed again vomit".

### **Grants and Cancellation According to the Civil Code**

The Civil Code contains grant law substance which consists of 4 parts contains Articles 1666-1693. Parts namely:

1. In the first loading general provisions consist of understanding about grants, donations made by living people, goods grants, shahnya grants, and terms of the grant.
2. The second loading is about the ability to give and take grants that contain entitled people giving and taking the husband's gift and gift wife.
3. The third part contains the method donate something contains the making of deed grants to notaries, grants to women, and minors.
4. Fourth part loading about the revocation and cancellation of grants that contain terms and conditions cancellation and cancellation a grant.<sup>15</sup>

According to the Civil Code, no conditions provide restrictions on grants given by the grantor as set out in Islamic Law Compilation. On in principle grants that have been given by someone to others cannot be withdrawn returned or canceled, except in such cases regulated in Article 1688 KUH Civil, namely:

1. If the terms of the grant are not met by the recipient of the grant. In this case, the item that was donated remains with the donor, or he may ask for the item back, free of all burdens and mortgages that may be placed on the item by the recipient of the grant as well as the results and fruits that have been enjoyed by the recipient of the grant since he failed to fulfill the conditions. that grant. In this case, the grantor may exercise his rights against third parties who hold the immovable property that has been donated as against the recipient of the grant himself.
2. If the person who is given the grant is guilty of doing or do something assassination attempt or something another crime against himself grantor.
3. If the donor falls into poverty being given a grant refused to provide for him.<sup>16</sup>

---

<sup>14</sup>Anggraeni Widya, *Responsibilities of grantors due to cancellation of grants* (Surabaya: Airlangga University, 2008), p. 51.

<sup>15</sup> Code of Civil law

<sup>16</sup>Muhammad Nasrul, *Grants in Islamic Law* (Johor: UTM Press, 2011), p. 11.

## CONCLUSION

Grants can be made orally or in writing as stated in Al-Qu'an Surah Al-Baqarah verses 282 and 283 as the basis of an agreement in Islam, based on this then if the grant is carried out orally/not made in writing with an authentic deed, does not mean that the grant is invalid. About legal consequences arising from grants that will be given to one of the heirs without the approval of other heirs and not made authentically, it can be canceled because there is no agreement from other heirs, and if the grant exceeds 1/3 of the inheritance. This is by the provisions of Article 210 paragraph (2) KHI further, if one of the heirs feels his rights have been violated, then he can file a lawsuit for cancellation of the grant to the Religious Court.

## BIBLIOGRAPHY

- Faizah, Awaliyah Robiah and Nadjematul. "Juridical Review of Grant Cancellation Cases (Case Study of Decision Number 467 K/Ag2017)." *Al-Mizan: Journal of Islamic Law and Economics*, no. 1 (2020).
- Ghofur, Anshori, Abdul. *Philosophy of grant and testament law in Indonesia*. Yogyakarta: UGM Press, 2018.
- Harsono, Boedi. *Indonesian Agrarian Law (History of the Establishment of the Basic Law Agrarian Affairs, Content, and Implementation)*. Jakarta: Djembatan, 2008.
- Code of Civil law
- Islamic Law Compilation
- Latifiani, Diane. "Authentic Deed to Minimize Grant Disputes." *Journal of Abdimas*, no. 1 (2015).
- Mansur, Putri, Darmawan, and. "Transfer of Joint Assets Through Grants Without the Permission of One of the Parties Based on Law Number 1 of 1974 and the Compilation of Islamic Law." *Shia Kuala Law Journal*, no. 1 (2019).
- Nasral, Muhammad. *Grants in Islamic Law*. Johor: UTM Press, 2011.
- Nasution, *Islamic Civil Law: competence of religious courts regarding marriage, inheritance, wills, grants, waqf and almsgiving*. Bandung: CV. Mandar Maju, 1997.
- Rushd, Ibn. *Bidayatul Mujtahid*. Surabaya: Azam Library, 2000.
- S, Khoshi'ah. *Waqf and Grants (Perspective of Fiqh Scholars and Their Development)*. Bandung: CV. Faithful Library, 2010.
- Soekanto, Soerjono. *Fundamentals of Sociology Law*. Jakarta: PT. RajaGrafindo Persada, 2007.
- Sugiyono. *Quantitative-Qualitative Research Methods and R&D*. Bandung: Alfabet, 2008.

# *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga*

Volume 5 Nomor 3 (2023) 1054-1062 E-ISSN 2656-8152 P-ISSN 2656-4807  
DOI: 10.47476/assyari.v5i3.3192

- Superman, Eman. *Internal Indonesian Inheritance Law Islamic Perspective, Custom and BW*. Bandung: Refika Aditama, 2005.
- Martyrs, Muhammad Fikri. "Cancellation of the Grant Deed by Heirs After the Decision of the Religious Court." *Journal of Law and Notary Affairs*, no. 1 (2019).
- Widya, Anggraini. *Liability of the grantor due to the cancellation of the grant*. Surabaya: Airlangga University, 2008.